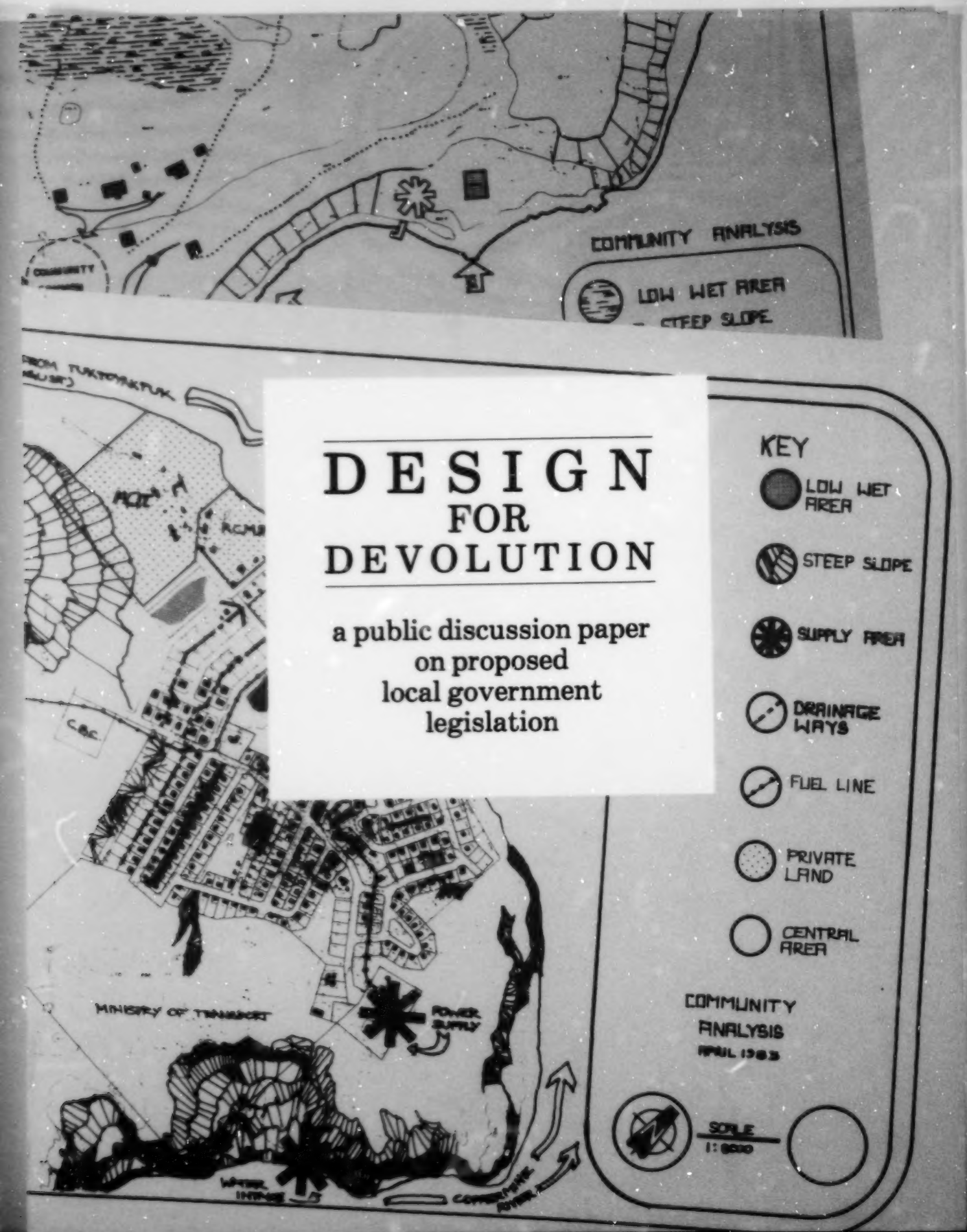

DESIGN FOR DEVOLUTION

a public discussion paper on proposed local government legislation

Northwest Territories Minister of Local Government

June, 1983

Residents of the Northwest Territories:

I am very pleased as Minister of Local Government to present this public discussion paper for your examination and your ideas. For several years, people and their elected representatives across the Northwest Territories have called for reforms in the Municipal Ordinance - the basic law affecting our local governments. Representatives of cities, villages and towns have proposed that their councils be granted more authority to make by-laws and raise revenue. Hamlets have called for these authorities as well. Hamlets have also asked for authority, for the first time, to keep property taxes from properties in the hamlets. Settlements and unincorporated communities, with the support of groups such as the Dene Nation, have called for recognition as community governments. Representatives of these communities have also emphasized the need for workable agreements between community councils and band councils where both exist.

The Government of the Northwest Territories is responding to these and other recommendations from the communities. The Executive Council of the Government has established the development of strong and effective local governments, as a priority for Government action. The Government believes that Design for Devolution very largely reflects the needs and preferences of Northern people. This summer the Government will be writing these ideas into law and will be requesting the Legislative Assembly to pass a Local Government Ordinance in September. I urge you to examine this paper and I would welcome your comments on its proposals. Please feel free to write to me or to telephone my office collect (403-873-7139) with your suggestions for the new Local Government Ordinance. I would also urge you to share your ideas with your community council and with your Member of the Legislative Assembly.

Yours sincerely,

James J. Wah-Shee.
Minister.

CORRECTIONS

"control ownership" on page 34 should read "control and ownership"

"develoment" on page 38 should read "development"

A DESIGN FOR THE DEVOLUTION OF ADDITIONAL POWERS AND RESPONSIBILITIES TO COMMUNITIES

A public discussion paper
on proposed local government legislation

by

The Honourable James Wah-Shee
Minister of Local Government

Government of the Northwest Territories
Yellowknife
May 1983

INTRODUCTION

The Municipal Ordinance has served as the guide for the development of local government in the Northwest Territories. Through the Ordinance itself and through supporting policies, the Government of the Northwest Territories - and the Federal Government before territorial government arrived in the North in 1967 - prescribed a ladder of political development for Northern communities. The top rung for a community was the status of a tax-based municipality. The tax-based municipality is a well-established form of local government - an incorporated public body with elected representative council members, and with a sufficient population and tax base to finance and operate its own community programs and services. Like southern Canadian municipalities, cities and towns in the Northwest Territories could, in many instances, raise their own capital funds for municipal projects by selling debentures. The councils of tax-based municipalities perceived, however, that the Territorial Government generally retained too much overriding authority, for example, with respect to approval of local by-laws and ownership and control of lands within communities.

When the Government of the Northwest Territories became established, it adapted southern Canadian models to produce a unique form of municipal government - the hamlet. Hamlets developed primarily in the Baffin, the Keewatin, in Kitikmeot and in the Mackenzie Delta. The hamlets were seen as an appropriate compromise between southern ideals for strong local councils and the lack of local sources of public revenue in many Northern communities. Like municipal councils in southern Canada or in towns in the Northwest Territories, hamlet councils would

be fully elected, able to set their own spending priorities based on a budget of their own, and to hire their own employees to deliver municipal programs and services. Unlike the other municipal councils, the hamlet councils were not required or expected to raise the money for their own budgets through property taxes in their communities. This approach was based on the realization that the property tax - the main source of financing for most municipal governments in Canada - simply could not be applied to Northern communities where there were few owners of private property. As one result, hamlets were perceived by other communities as having plenty of local authority, but not much responsibility for paying their own way. The other side of the coin, however, was that the Government reserved for itself the approval authority for many by-laws which other types of local government could enact on their own. Moreover, as hamlets witnessed the start of new, major non-renewable resource developments at their doorsteps, they were unable to derive direct revenues from such projects, and thereby to grow with development.

Settlements comprised the least-developed form of local government, from the Territorial Government's point of view. Elected settlement councils existed, but their functions were largely advisory; Government managers and Government departments delivered programs in the communities. There was no question of local authority to raise revenues for the benefit of the community; it simply was not considered. Nor did the settlement councils have any legal powers. In most settlements in the western part of the Northwest Territories, Dene residents were served by band councils which had been established for many years with the continuing policy and funding support of the Federal Government; to the Territorial Government in the 1970's the presence of band councils posed a bar-

rier to the development of local government representing all adult residents in the settlements.

Today's Government of the Northwest Territories believes that the time has come to undertake significant amendments to the Municipal Ordinance. The Government challenges the traditional assumption that the prime criteria for effective local decision-making authority must be the size of a community's population or the sum of its taxable assessment. If this premise persists, the Hamlet of Broughton Island will always be expected to strive towards the model of the City of Yellowknife. It is questionable whether the municipal ladder approach is possible or in fact desirable for most communities in Canada's North. Through a new Local Government Ordinance, the Government of the Northwest Territories will propose a blueprint for political development in communities in keeping with their own expressed needs and preferences. It is intended that separate Parts of the Local Government Ordinance will provide the respective frameworks for the continued development of towns and cities; of hamlets; and of community governments.

PRINCIPLES AND PROPOSALS

RESPECTING

TAX-BASED MUNICIPALITIES

Legislation

It is significant that the Municipal Ordinance - one of the major Ordinances of the Northwest Territories in terms of impact on the public - is in critical need of modernization. While numerous housekeeping amendments have been made over the years, some parts of the Ordinance are over a hundred years old, originating with the establishment of the Northwest Territories in 1880. The Northwest Territories Association of Municipalities, on behalf of the seven tax-based municipalities, has called for a complete revision of the Ordinance. With regard to the tax-based municipalities, which approximate the southern Canadian model of municipal government, there is a need to update and consolidate, in one distinct part of a new Local Government Ordinance, the relevant sections of the Municipal Ordinance to meet contemporary needs. As a first step, the legal definitions which affect tax-based municipalities should be expanded and clarified. The Government proposes to delete certain obsolete definitions and to add new ones. Examples include deletion of references to "hamlets" since a separate part of the new Local Government Ordinance will be devoted to them; amendment, in various sections, of the various definitions of "land" in order to establish consistency in the new Ordinance; and the addition of a definition of "residency".

Criteria for Tax-Based Municipalities

The trademark of a tax-based municipality is its authority and responsibility to form its budget primarily on the basis of tax revenues collected from its

residents. The ability of a town or city to finance itself is in direct relation to its total taxable assessment. Traditionally, the Government has encouraged communities to become tax-based municipalities, cities, towns, or villages as soon as significant private taxable assessment appeared. Representatives of these municipalities have contended, however, that for some communities the move into tax-based status was premature. Consequently, the Government, with the support of the tax-based municipalities, submits the principle that

> criteria for establishing cities and towns should reflect adequate taxable assessment so as to ensure fiscal viability.

To give further meaning to this principle, the Government proposes to establish, in the new legislation, the following criteria for city or town status:

- population
- fiscal viability
- demonstrated administrative competence.

Elections

The present Municipal Ordinance has, in the best traditions of Canadian municipal government, prescribed elaborate and careful procedures respecting municipal elections. In many cases these provisions were borrowed from legislation in the provinces. Municipal spokesmen in the Northwest Territories have called upon the Government to re-examine local election procedures in view of the smaller

voting populations, and the proportionately larger presence of aboriginal people, in Northern communities. The Government accepts, as a principle, that municipal election procedures should be simplified. In the new Local Government Ordinance, as it affects tax-based municipalities, the Government proposes to permit the municipalities, at their own option, to provide, by by-law, for any or all of the following practices:

- proxy voting
- the improvement of municipal election ballots to provide for local changes in design; photographs of candidates; acceptable ballot marks; and use of local languages on ballots.
- permission for a qualified elector to vouch for himself at the poll.
- establishment of Saturday as voting day.

In addition, the Government proposes to dispense with the Court of Revision for municipal elections and to replace it with a simplified legal procedure requiring municipal residents to apply, by a prescribed date, for inclusion on the voter's list. The safeguard will still be available for qualified electors to be sworn in at the polls on voting day.

Residents of tax-based municipalities, hamlets and unincorporated communities throughout the Northwest Territories have consistently maintained that an awareness, by the newcomer, of the unique conditions and issues of Northern social

and political life can only be acquired after a period of familiarization. In keeping with the preferences of the communities, the Government asserts as a principle that:

> Residency requirements should recognize long-term commitment to the community.

With regard to tax-based municipalities, the Government will establish, in the proposed Local Government Ordinance, a residency requirement of one year in the municipality for purposes of eligibility for voting in and contesting municipal elections.

Municipal Councils

The present Municipal Ordinance prescribes the sizes of village, town and city councils. Studies of government in the Northwest Territories, such as the Report of the Prime Minister's Special Representative on Constitutional Development in the Northwest Territories, have described this requirement as unnecessarily restrictive for small municipalities. The tax-based municipalities agree; and have enunciated the principle, endorsed by the Government, that:

> Municipalities should have councils of appropriate size to meet the evolving needs of their government.

In the proposed legislation, the Government will provide for variable sizes for municipal councils, the exact size to be established by the municipality

itself. The municipalities and the Government also agree, in principle, that municipal councils should have greater continuity in office, in the interests of more experienced and effective municipal government. In the proposed Local Government Ordinance, there will be an option for the municipal council, to establish either a two or a three year term of office for future councils and to abolish staggered terms of office. In cases of vacancies on council, the municipal council would first be required to attempt to fill the vacancies from candidates from the last regular municipal election; and then could hold a by-election. By-elections would not be held within six months of a regular council election.

Ward Systems

Presently, municipal councillors in the Northwest Territories are elected "at large"; they must campaign for the support of voters throughout their respective communities. Some groups, such as the Dene Nation, and some communities have contended that the "at large" constituency system does not recognize the existence of distinct neighbourhoods and aboriginal minorities within the major N.W.T. municipalities. This system, they believe, actually prevents or discourages prospective municipal council candidates of aboriginal background from running for office.

The Government believes that municipal councils should be enabled to determine the structure of their constituencies. Accordingly, the proposed Local Government Ordinance will provide municipal councils with the options of maintaining the "at large" system, or of establishing ward systems, in which candidates for municipal council would be able to campaign in specific districts within the

municipality. In the interests of stability in municipal government, the legislation will require a municipality which establishes a ward system to maintain that system for at least two council terms before any conversion to an "at large" system may be undertaken. Similarly, a municipal council which establishes an "at large" system would be required to maintain that system for at least two council terms before a change to a ward system could be undertaken.

Eligibility for Councillors

It is intended, subject to public input, that the new legislation for tax-based municipalities will reinforce the principle that qualifications for municipal councillors should emphasize personal, financial and legal responsibility. Candidates will be required to certify that they do not owe money to the municipality at the time of running for office.

Council Meetings

To meet the needs of modern municipal government, municipal councils should, in principle, have reasonable flexibility to act quickly to meet pressing public and management concerns. Under the proposed legislation, municipal council will be enabled to meet without notice to respond to defined emergencies. The option will be made available in the new Ordinance for the council of a tax-based municipality to appoint additional statutory officers, such as chief administrative officers, clerks and treasurers. The executive authorities of mayors will be clearly defined; this will also be done in the part of the new Local Government Ordinance affecting hamlets.

Delegation of Government Programs

Local government in the Northwest Territories has developed with the objective of acquiring increased authority and responsibility for programs and services delivered by the Territorial level of government. Recognizing, however, that different municipalities may wish to take on additional authority at different times, the Government has adopted the principle that

> Maximum flexibility should be open to councils respecting authority to be delegated to councils.

The Government intends, through the new legislation, to delegate additional authority to the councils of tax-based municipalities, at the option of each council. One important example is the authority to control traffic (including the collection of fines) on Territorial highways within the municipal boundaries. To promote local economic development, the Government will be requesting the Legislative Assembly to provide, through the new legislation, for municipalities to enter into industrial development agreements.

Municipal Lands

For tax-based municipalities, land represents a major source of revenue, through property taxation and through land sales. The proposed Local Government Ordinance will provide for tax-based municipalities, if they choose, to acquire all Commissioner's Lands within municipal boundaries which are not designated for future Government use; and will afford the municipalities greater control over the sale and lease of land, including tax sale procedures. It will also

set out rules for the administration and management of municipal lands by the councils. Through the new legislation, tax-based municipalities will be encouraged to assume more authority for community planning. In this regard, the Government will consult with other interested groups and agencies on the possibility of permitting municipalities to establish development zones of influence for lands bordering or in the vicinity of municipalities.

Taxation

In the new Local Government Ordinance and in the future development of policy, the Government will enhance the taxing authority of tax-based municipalities, with respect to property taxes, school taxes and other sources of revenue. The community service charge, a symbolic tax at best, will be repealed in the new legislation. Municipalities will also be given greater taxation authority regarding mobile homes.

Additional Council Authority

The Government recognizes the experience of the councils of tax-based municipalities in addressing local problems and in delivering effective municipal programs and services. Therefore, the new Local Government Ordinance will permit the council of a tax-based municipality, subject to the approval of the Minister of Local Government, to enact a by-law on any matter not specifically covered by any section of the Ordinance but consistent with the meaning of the Ordinance.

PRINCIPLES AND PROPOSALS

RESPECTING

HAMLETS

Legislation

Hamlet councils have consistently called for the simplification of Territorial legislation which affects local government and the interests of community residents. It is also worth noting that the Government has established as a priority the preservation and enhancement of the aboriginal languages of the Northwest Territories. In keeping with the needs for better accountability of local governments and responsiveness to the preferences of all community residents, the Government believes, as a principle, that

> All legislation affecting communities should be clear, precise and simply worded to facilitate translation.

Taxation

Through the 1970's, the public demand for better programs and services has touched all levels of government in the North, including hamlets. While the Territorial Government and the tax-based municipalities were able to raise revenue within communities through the property tax, the hamlet councils have not been permitted to do the same under the Municipal Ordinance. Moreover, in recent years, private properties within hamlets have been taxed, but the taxes have gone direct to the Territorial Government instead of remaining with the hamlet council. This practice cannot be considered an incentive for hamlets to

take greater control over their own spending decisions. The Government now proposes the principle that

Hamlets should have the power to tax.

To give this principle further meaning in hamlet legislation, it is proposed that the hamlets should have the following choices available to them:

1. A hamlet council could maintain the present arrangement, in which the Government of the N.W.T. levies and collects the property taxes and retains them for its own use; or
2. Within the formula by which the Government provides funding for hamlet programs and services, the hamlet council could retain all revenue from taxes levied and from service charges paid in the hamlet.

Municipal Responsibilities

Despite having their own budgets, hamlet councils are often restricted in their efforts to develop by-laws and programs to meet community priorities and needs. A major reason is that the Municipal Ordinance does not indicate clearly the responsibilities of the hamlet council with respect to many kinds of community services. In order for council to be able to establish known and attainable priorities in the interest of the community, it is an essential principle that

Council's responsibilities should be clearly defined.

The Government proposes that hamlet councils should be responsible for delivery or control of the following activities in their communities:

- municipal services
- public and environmental health
- protection of persons and property
- business licencing
- community planning
- transportation services, including community airports
- recreation

In addition, the Government proposes that hamlet councils should be able to deliver or oversee other services after proper negotiations between themselves and the Government.

Council as Prime Public Body

It has been evident in recent years that hamlets have witnessed an expansion of special-purpose advisory and program committees sponsored by various Government departments and agencies. In many instances the Government has called upon these committees for advice or support. At the same time, it is often not clear to community residents what the hamlet council is responsible for. The result has been that the authority and accountability of the hamlet council have been unclear, both with senior levels of government and with community residents. The Government believes that this situation must be corrected if communities are

to have real and unified control of their own affairs. The principle must be established that

> the council should be the prime public authority within the community, with the responsibility for the coordination of the activities of special purpose bodies sponsored or supported by the Government of the Northwest Territories.

To implement this principle, all funding from the Government to GNWT - sponsored community groups should be administered through the hamlet council. This would mean that the hamlet council would be able to offer central financial accounting services for the community bodies, reducing the administrative costs in the community. The authority of the council may be strengthened further by providing, in legislation, that hamlet councils may be delegated responsibility for delivering Government programs.

Regional Councils

Throughout the Northwest Territories, communities have initiated regional and tribal councils. The first of these was the Baffin Regional Council, formed in April, 1977 and incorporated by legislation in 1980. Other councils are being established in the Keewatin and Kitikmeot Regions; in the Mackenzie-Liard; and in the North Great Slave Region. There is also interest in organizing similar councils among communities in the Inuvik and Beaufort Sea, in the Great Bear

area, and in the South Great Slave area. All of the regional and tribal councils intend to provide advice to the Government on the development and delivery of programs and services; and, where appropriate, to deliver programs themselves under agreements to be negotiated with the Government of the Northwest Territories.

The constitutions of all of the regional councils call for the core membership of the councils to consist of the mayors of municipalities, including hamlets, the chairmen of community and settlement councils, and, where appropriate, the chiefs and sub-chiefs of Dene band councils. The Government has adopted the principle that

> Municipalities should have the right to participate in regional and tribal councils.

In keeping with proposals from hamlet representatives, the Government intends to provide, in legislation, that municipalities will be able to join, form, or withdraw from regional or tribal councils. Hamlet councils should be enabled to make financial contributions and to delegate responsibilities up to regional or tribal councils.

Financial Responsibilities

Hamlets cannot be expected to exercise greater local control without full understanding of their financial authorities and responsibilties. Accordingly, the Government proposes to set out clearly in legislation the hamlet's authority and

responsibility with respect to capital. Funding for items of capital equipment could be given to the hamlet, which would have purchasing authority for capital items. Capital funding for municipal buildings and works, which is presently administered by the Department of Local Government and the Department of Public Works, could be transferred to hamlets as capital grants. The Department of Public Works would act on behalf of the hamlet in carrying out capital projects. Through this arrangement the hamlet council would deal directly with the Department of Public Works and would become involved in the execution of municipal buildings and works projects.

By-Law Making Authority

The Government also believes that it is time to strengthen the hamlet council's by-law making authority. The proposed legislation would end the involvement of the Commissioner in approving by-laws, other than money by-laws, enacted by hamlet council. In addition, the legislation would enable hamlet councils, by passing by-laws, to provide services to the community which are not otherwise provided, including, for example, the operation of community radio societies. The by-law making authority of the hamlet councils should also be enhanced with respect to licencing, regulating and controlling business hours. This is particularly essential in small communities where late-night business activities have had adverse effects on school attendance, on public peace, and on community well-being in general.

Hamlets As Employers

Hamlets have always had the authority to set the terms and conditions of work for their employees. Hamlet representatives and, indeed, Members of the Legislative Assembly have pointed to inequities, in salary and benefits, between hamlet employees and Government of the N.W.T. employees holding similar positions. The Government recognizes the principle that

> Salary and benefits for hamlet employees should be comparable to benefits provided by the GNWT for similar positions.

The proposed new local government legislation, respecting hamlets, will make the Municipal Employees Benefits Ordinance plan a statutory requirement for hamlet employees; and will require the hamlet councils to pass employment by-laws every year to establish the salary levels and employment terms and conditions for their employees.

Economic Development

It is well-known that the Northwest Territories will be witnessing major resource development projects, probably for the rest of this century. The Federal and Territorial governments have taken the position that Northern residents and communities must secure real economic benefits from these projects. A number of municipalities, including some hamlets, have considered entry into economic development corporations to help foster the growth of community based business and employment opportunities for the benefit of their residents. This type of local

government involvement is not common among municipalities in southern Canada. The Government observes, however, that many Northern communities lack strong, private businesses which can generate substantial community economic opportunities without government assistance. The Government proposes that

> Hamlets should be enabled to own shares in economic development corporations, including resource-based corporations.

The Government will stipulate, in the local government legislation, that municipal entry into economic development corporations must be subject to the approval of the residents through a community plebiscite and that public funds are to be expended in accordance with proper financial procedures and not to the detriment of municipal services.

Council Responsibilities

If hamlets are to acquire increased authority and responsibility, it will be essential that the management roles and relationships of hamlet mayors, councillors, and secretary-managers be clearly set out in legislation. In particular, the proposed local government legislation, as it affects hamlets, will establish conditions for the delegation of authority by councils to secretary managers; will outline the broad responsibilities of hamlet councillors; and will define the authority of the mayor for over-seeing (as distinct from supervising) hamlet management and administration.

Elections

It is an axiom of Canadian democracy that local government is the level of government which is closest to the people. Election of local councillors provides the people with one of their most important forms of influence. Consequently, it is essential that election rules should be clearly known and understood by the public. Hamlet representatives have enunciated the principle that:

> Eligibility rules for voting and standing for council elections should be the same in all hamlets.

The Government recognizes that this principle, while it reflects the preferences of hamlets in the Baffin, the Keewatin and the Kitikmeot, may not meet the interests of hamlets in the western part of the Northwest Territories.

It is the Government's intent, in the proposed legislation affecting hamlets, to provide for the following:

- a residency requirement of one year for voting in and standing for hamlet council elections.
- a minimum age requirement of 19 years for voting and candidacy.
- a requirement of Canadian citizenship for voting and candidacy.

- separate election dates for the hamlet mayors and the hamlet councillors.
- provisions to enable candidates to be nominated for mayor as well as for hamlet councillor.
- requirements that council or mayoralty candidates cannot be indebted to the municipality beyond current billing in respect of municipal service charges or taxes.

The legislation will also require a candidate for mayor or hamlet councillor to certify in writing that he or she is eligible to run for office.

An accompanying principle is that

Election procedures should be simple.

In the proposed legislation, the Government will provide for proxy voting and will allow candidates' photographs to be displayed on official ballots. The Government also intends to remove long, technical sections of the Municipal Ordinance which prescribe detailed procedures for returning officers in conducting hamlet elections. Instead, these sections will be simplified and placed in a special handbook, for returning officers, as a schedule to the proposed legislation.

Terms of Office

The hamlet councils and the Government also agree that there should be provisions to allow for continuity in council. The proposed hamlet legislation will provide for the hamlet council to consist of a mayor and up to eight councillors, and for two-year, staggered, terms of office. Provision should be made for hamlet councils to hold by-elections in case of vacancies. Councils would first be required to try to fill vacancies from candidates from the last council election; and by-elections would not be held within three months of a regular council election. To assure greater financial control by council, provision will be made for a newly elected hamlet council to take office before the start of the hamlet fiscal year. In addition, in recognition of the social and economic needs of many community residents who depend on fish and wildlife harvesting for their livelihood, hamlet council should have seasonal flexibility with regard to quorums and frequency of council meetings. The Government will propose, in legislation, to allow a hamlet council to authorize a committee of any three councillors to make emergency purchases, to pay bills and to respond to civil emergencies when the majority of councillors are absent from the community for extended periods, for example, during the hunting season. The committee would be required to report back to the hamlet council at its first regular meeting.

Removal of Councillors

The public desire for improved accountability of elected officials, to each other and to the public at large, has been expressed at all levels of government, including hamlets. In keeping with the advice of hamlet representatives,

the Government proposes that there should be provision in legislation for the removal of hamlet councillors by their colleagues for non-attendance at council meetings, for convictions for indictable offences, and for convictions for misuse of public funds.

Conflict of Interest

Hamlets have indicated that the existing provisions of the Conflict of Interest Ordinance, while adequate with regard to conditions governing members of hamlet councils, should be clarified. Accordingly, the Government proposes to make the necessary amendments to the Conflict of Interest Ordinance to provide clearer and more translatable conflict-of-interest rules.

Municipal Land

Control of land is vital for any community to plan effectively to meet the social and physical needs of the residents. Yet in most hamlets, large percentages of land within hamlet boundaries are not under the control, direct or indirect, of the hamlet. In many cases, this land is Commissioner's Land, which is owned by the Government of the Northwest Territories and held in trust for the hamlet by the Department of Local Government. Hamlets have proposed that, whether control is direct or indirect,

> the hamlet should control all land within the hamlet.

In the proposed local government legislation, the Government will:

- allow the hamlet to own land for its facilities.
- allow the hamlet to determine land use and disposal by by-law.
- allow the hamlet to exercise planning authority for the physical development of the community.
- grant the hamlet the ability to enter into sole vendor agreements for the sale and lease of municipal land.

The local government legislation will also establish provisions for the extension of municipal boundaries to provide access to lands essential for community needs. In addition, the Government will initiate discussions with the Government of Canada, with aboriginal organizations and with other interested parties, to ensure that block land transfer boundaries coincide with municipal boundaries. Subject to the settlement of aboriginal land claims and the further transfer of Federal Crown lands to the control of the Territories, the municipality should, in due course, own all untitled land within the municipal boundary if it so chooses.

Formation of Hamlets

Community councils and residents throughout the Northwest Territories have long maintained that the criteria for forming a hamlet - and thereby securing greater

local authority and Government recognition in legislation, policy and funding assistance - have never been clearly defined. The hamlet councils and the Government believe, as a principle, that

> unincorporated communities should be able to form a hamlet according to explicit criteria.

The Government will propose, in the local government legislation, that, if a petition is received by the Government from a designated number of community residents calling for the establishment of a hamlet in their community, a plebiscite must be held in the community.

Other criteria to which the Government might refer in assessing the preparedness of the community for hamlet status could include:

- population
- relative costs to government of providing services
- potential tax base

Change of Status

The new local government legislation is intended, in part, to recognize the distinct needs and preferences of tax-based municipalities, hamlets, and community governments, with regard to local decision-making and financial authority, election procedures, community lands, and other issues. If the new

local government legislation is approved by the Legislative Assembly, some councils may wish to review their present status and opt for a different form of local government. The hamlet councils advance, as a principle, that

> there should be reasonable provision for councils to change their legal basis at the time the new legislation comes into effect.

The Government proposes to include in the new local government legislation a "grandfather clause" to enable hamlets and incorporated communities to change their status if they so wish.

PRINCIPLES RESPECTING
COMMUNITY GOVERNMENTS

The Need for Consultation

The Government of the Northwest Territories is committed to "participating in the development of a consensus on the form and style of future government" in the Northwest Territories.* Consensus on the development of legislation for community governments - conventionally known as settlements or unincorporated communities - has yet to be achieved. Most settlements and unincorporated communities are located in areas of affected by the Denendeh proposal for a new Territory and government in the western part of the Northwest Territories. Several complex issues will require several years to address and will ultimately have significant impacts on the structure and powers of settlements and unincorporated communities which become community governments. Some of these issues include the future role of Dene band councils within the communities; Federal Government positions on Indian self government throughout Canada; the outcome of aboriginal claims negotiations between the Dene Nation and the Federal Government; and the continuing work of the Western Constitutional Forum. There will be a need for the new local government legislation to be sensitive to and shaped by these developments, as well as the Canadian Charter of Rights and Freedoms. The Government of the Northwest Territories is

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*Priorities of the Government of the Northwest Territories, Summary for the 1983/84 Budget Session of the N.W.T. Legislative Assembly, February 1983.

encouraged that representatives of Dene band councils and representatives of settlement councils have offered to assist the Government in identifying principles to shape the development of Territorial legislation affecting community governments. The Government regrets that the time it felt it could allow for preliminary consultation with community and band representatives has been extremely brief. It is hoped, however, that the consultation process can be continued in communities in the summer of 1983.

Preamble

It is recognized by the Government that community residents should have effective control over those matters in their communities that directly affect them. In addition, legislation for community governments should provide broad parameters for potential of enabling authority to the communities. The following principles are presented with this in mind:

Delegation of Territorial Government Authority

Subject to the wishes of community governments, delegation of specified authority and responsibilities to community governments by the Territorial Government should be as complete as is legally, financially, and administratively practical, in order to ensure that community governments have the necessary resources to properly meet these responsibilities.

Political Authority

All voting residents of the community should be the primary forum of political authority for community affairs. The community residents should have the opportunity provided in legislation to develop new political structures which may include:

- community assemblies
- community assemblies and community councils
- community councils

The authority of the community residents could include the following:

- to establish, through negotiation with the Government of the Northwest Territories, the delegation of authority to best meet the needs of the community.
- to develop and change policies
- to manage programs
- to allocate community government resources as required by the needs of the community

- to make their own rules for the formation and operation of committees of the community assembly or the council

Funding

Community governments should be provided with a sufficient level of funding to fully exercise their powers and discharge their responsibilities. Operating, maintenance and capital funding should be determined on the basis of discussions with the Territorial Government.

Incorporation

Community governments should be given corporate status.

Election Procedures

Standard, fair, and understandable election procedures should be established for all community governments and hamlets.

Eligibility in Community Elections

Eligibility to vote and run in community elections should be based upon a standard residency requirement of sufficient length to ensure that voters and candidates understand the community's affairs and are committed to the community's well-being.

Aboriginal Rights

Aboriginal rights shall not be abrogated by legislation for community governments.

Aboriginal Representation

Additionally, the Government recommends that the Legislative Assembly endorse the establishment, in legislation, of provisions to ensure that aboriginal residents are permanently represented on the community council. Options in the legislation could include community ward systems or guaranteed minimum representation for aboriginal residents on the community council.

Non-Aboriginal Community Residents

Community governments shall ensure that the rights of non-aboriginal residents to participate in community governments are fully protected.

Lands

Subject to aboriginal rights, community governments ultimately should have control ownership of all lands within community boundaries.

Delegation of Government Programs

The program authority vested in hamlets under the Municipal Ordinance should also be vested in community governments. Subject to the wishes of each

community government to acquire additional program authority and responsibility, the community government may negotiate with the Government of the Northwest Territories to acquire delegated program authority with respect to housing, social assistance and economic development (including business licencing, equity participation, and employment and training).

Community-Based Economic Activities

Community governments should be enabled to participate in or control community-based economic activities for the general welfare of all community residents. Whether and to what extent community governments should participate in or control such activities should be decided by a plebiscite of community residents and should be subject to their review. However, public funds designated for specific community services and programs should not be used for economic development activities;

Affiliation of Incorporated and Unincorporated Communities

Subject to the agreement of the residents of communities incorporated under this legislation, unincorporated communities associated with incorporated communities should have the right to decide whether or not to join the incorporated community;

Regional and Tribal Councils

Community governments should be free to join, form, or withdraw from regional or tribal councils. The authority of community governments in local government

legislation must not be diminished by legislation for regional and tribal councils.

Community Government and Other Community Bodies

The community government should be the prime public body at the community level. Accordingly, all community bodies which are given delegated powers by the Territorial Government should be accountable to the community government to the fullest extent possible.

Accountability of Public Employees

Other levels of government should be responsive to community residents in the delivery of all programs at the community level; therefore, all public employees accountable to the Territorial Government and assigned to the community should also be accountable to the community government, to the extent to which they are assigned responsibility for delivering Government programs delegated to the community government.

CONCLUSION

The Government's proposal to introduce a new Local Government Ordinance represents a comprehensive response to the expressed needs and preferences of all kinds of local governments in the Northwest Territories. The needs of the North have evolved beyond a point where they can be addressed simply by making more amendments to a century-old Municipal Ordinance.

If approved by the Legislative Assembly, the new Local Government Ordinance will make available more delegated authority - and with it, more responsibility - for tax-based municipalities, hamlets and community governments. For the first time, hamlets and community governments will, through delegation of authority over community lands, have real control over the planning of community development for the benefit of community residents. Election rules will be simplified and clarified to meet the needs of Northerners. Cities, towns and villages will be accorded additional enabling authority to pass by-laws which meet community concerns and problems without conflicting with territorial jurisdiction. The prime authority of the communities will be stated with respect to regional and tribal councils. Moreover, the new local government legislation will be developed concurrently with and be sensitive to, the continuing processes of resolving aboriginal claims in the Northwest Territories.

The government recognizes that substantial work in the develoment of effective and responsive local government in the North still lies ahead. Nevertheless, an important new start is now being undertaken in Territorial legislation with the advice of community, band and regional and tribal councils. The Government

believes that the proposed new Local Government Ordinance provides a practical and responsive blueprint for political development.

Northwest Territories Local Government

ISBN 0-7708-6423-6 Northwest Territories Information ©